United Nations S/2002/616

Security Council

Distr.: General
4 June 2002

Original: English

Letter dated 4 June 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Fiji, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

02-41432 (E) 180602

BEST COPY AVAILABLE

Annex

Note verbale dated 31 May 2002 from the Permanent Mission of Fiji to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Representative of the Republic of Fiji to the United Nations presents his compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and, further to paragraph 6 of the aforementioned resolution, has the honour to transmit herewith the report of the Government of Fiji on the steps it has taken to implement the said resolution (see enclosure).

Enclosure

Report of the Government of the Republic of Fiji pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001

Operative Paragraph 1

Sub-paragraph (a) - What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1(b) to (d).

Mutual Assistance Act 1997 and the *Proceeds of Crime Act* 1997 were enacted prior to September 11. They contain pertinent issues in tracing, confiscation and collaboration in investigation on proceeds of crime – in monetary and non-monetary b
enefits.

Specific action needs to be taken by the Finance Ministry and the Reserve Bank with respect to the consolidated list of entities, organisations and individuals compiled by the CTC to establish possible or actual transactions by these groups in Fiji, if any with respect to combating terrorism financing.

Sub-paragraph (b) - What are the offences and penalties in your country with respect to the activities listed in this sub-paragraph?

No specific legislative or executive response has been taken after September 11 and Resolution 1373. It is anticipated that such responses would need to take place within a broader reform package that accommodates all relevant issues.

The *Mutual Assistance in Criminal Matters Act* and the *Proceeds of Crime* Act contain relevant provisions and sanctions. The offence of Money laundering attracts a fine of $120,000 and/or imprisonment not exceeding 20 years (69). The penalty for predicate or serious offence is death or imprisonment of not less than 12 months (s3). Other penalties include property confiscation or forfeiture, which are to be facilitated by search and seizure of tainted property, lifting of the corporate veil, or restraining orders.

Sub-paragraph (c) - What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

Mutual Assistance Act 1997

Proceeds of Crime Act 1997 sections 69 or 70 create the offences of money laundering. S61 requires a financial institution to inform the Commissioner of Police or the Director of Public Prosecutions (DPP) where it has reasonable grounds to suspect that information it has on a transaction maybe relevant to an investigation. S59 also require financial institutions to identify, verify and keep records of identities of customers.

Similarly, the Reserve Bank also issues its anti-money laundering guidelines. Under its principal legislation *Reserve Bank Act* Cap 210 1993 the Reserve Bank administers exchange controls to monitor and regulate capital flows through the banking system.

The *Exchange Control Act* sets out other relevant conditions for determination by the Reserve Bank of residency, for opening of non-resident accounts in Fiji or other currency, in offshore or Fiji banking, financial or credit institutions, which are registered or approved by the Reserve Bank. The Reserve Bank monetary policies and exchange control measures have been progressively relaxed since September 11.

In February 2002 the Fiji Anti-Money Laundering Officials Committee (AMLOC) completed a Mutual Evaluation Exercise on Fiji's anti-money laundering regime, through the Asia Pacific Group Secretariat in line with the Financial Action Taskforce's 40 Recommendations.

Other relevant legislative framework of relevance for further inquiry by the Counter-Terrorism Committee include the *Excise Act* Cap 199, *Finance (Control and Management)Act* Cap 69, *Customs Act* Cap 196, and other taxation or revenue legislation.

Sub-paragraph (d) - What measures exist to prohibit the activities listed in this sub-paragraph?

In addition to the provisions of the *Mutual Assistance Act* 1997 and *Proceeds of Crime Act* 1997, the AMLOC is in place to oversee initiatives to combat money

laundering. The Committee is chaired by the Ministry of Justice and comprised of the DPP Office, Solicitor General, Fiji Police Force, Reserve Bank of Fiji, and Fiji Revenue and Customs Authority. Other ministries will join the committee. It will report directly to the National Security Council on implementation of current initiatives. AMLOC will also oversee formulation of new initiatives. Its mandate is envisaged to expand to reflect its counter terrorism overseeing functions.

Of general application, specific statutes govern the conduct of charitable, religious, cooperative, political, incorporated or professional societies, unions, bodies, or associations (see Laws of Fiji Caps 66 to 68, 248 to 261). It is yet to be explored how these could be open to infiltration by likely terrorist groups. However, a recent deregistration of a charitable trust, as determined by the Courts, serves as a precedent to dissuade terrorist-linked organisations from conducting business or activities in Fiji.

Operative Paragraph 2

Sub-paragraph (a) - What legislation or other measures are in place to give effect to this sub-paragraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

The Constitution of the Republic of the Fiji Islands Article 112 reinforces the establishment of the Republic of Fiji Military Forces, which is administered by the Minister for Home Affairs under the Principal legislation *Republic of Fiji Military Forces Act 1949* Cap 81. That legislation governs the establishment, recruitment and operations of the military forces and its mandates.

Article 111 of the Constitution confirms the constitutional office status of the Commissioner of Police to command the operations of the Fiji Police Force. This discipline force is established by its principal legislation *Police Act* 1966 Cap 85. In addition to the recruitment and disciplinary regulations, the Act also defines general offences with respect to possession of articles supplied to police officers for the discharge of their duties such as arms if necessary, proscribes police officers' membership of certain associations, and circumstances for police service outside of Fiji (sections 43 to 59).

Emergency Decree
Constitution

<u>Sub-paragraph (b)</u> - What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other states?

Mutual Assistance Act 1997 and *Proceeds of Crime Act* 1997

The National Security Council is now reactivated, following the May 2000 political crisis and the abolition of FIS by the Chaudhry government in 2000. Its core functions are to keep a tab on all matters concerning security, decide what actions to take for national security and be able to tackle problems before they arise, unlike the May 19 situation.

The May insurrection was avoidable if the ousted government had heeded police warnings. Allegedly, police and military intelligence had warned the [Chaudhry] government that things were building up and should be tackled at that stage. The police Special Branch and the Military Intelligence had performed their task of warning the government, that if nothing was done then the problem would escalate to a stage culminating in something like what happened on May 19.

The creation of Combined Law Agencies Group (CLAG) concept entails the sharing of information as well as combining resources and expertise to combat crime. This concept was conceived from the SPCPC and is developing its domestic mandate. Extending the latter to encompass the broader issues of international terrorism and related concerns requires up-skilling, specialist resources and appropriate technological assistance.

In November 2001, Police were monitoring people believed linked to two terrorists who slipped through the country undetected in September. In a bid to round up anyone who has any form of involvement with the terrorists, the Police Special Branch extended its investigations to detailed scrutineer of this case.

Airport security has been visibly tightened since 9/11.

More recently, through Interpol information sharing and collaboration Fiji Police was following activities of an international drug syndicate, which involves known Fiji persons or connections. The scope for extending such vigilance and monitoring cooperation and assistance to terrorists individuals and organisations

can be enhanced, to have wider involvement of border control agencies such as immigration, customs and excise and Ports Authority for instances.

Sub-paragraph (c) - What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph? It would be helpful if States supplied examples of any relevant action taken.

No specific terrorists targeted provisions in the *Immigration Act Cap*. This regime requires appropriate review to accommodate terrorist related international crimes including people smuggling, human trafficking, illicit drug or illicit arms trade, etc. Government is currently reviewing our immigration laws, along with the restructure of the Department of Immigration to improve its efficiency and effectiveness.

Technical and expert assistance are identified in legislative drafting in this specialist administrative law area.

Sub-paragraph (d) - What legislation or procedures exist to prevent terrorists acting from your territory against other states or citizens? It would be helpful if States supplied examples of any relevant action taken.

Only Interpol for general international criminal activities associated with international terrorism
Mutual Assistance Act 1997 and *Proceeds of Crime Act* 1997

Sub-paragraph (e) - What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

The survival of treason offence was confirmed in the State prosecutions against instigators of the May 2000 civil takeover of the elected government. The guilty plea by the main 'coup' figure, Speight attracted a death sentence, which was commuted to life imprisonment under the President's constitutional prerogative of Mercy.

The related court martial of military mutineers of November 2000, which is now in progress, is also dealing with similar death sentences for the charges concerned in those proceedings. Some consistency in ruling and maintenance of constitutional bill of rights standards is necessary.

These contemporary examples present possibilities for expanding criminal offences to terrorist acts with corresponding severe penalties and sentences. This is also timely, given the present sentencing law reform reference which is being conducted by the Fiji Law Reform Commission.

Mutual Assistance Act 1997 and *Proceeds of Crime Act* 1997 are also relevant. Certain provisions have been identified for future amendment to fully comply with Resolution 1373.

In general, the Law review and reform is needed.

Sub-paragraph (f) - What procedures and mechanisms are in place to assist other states? Please provide any available details of how these have been used in practice.

In addition to bilateral and multilateral agreements, MOUs between Forum members through regional interagency organisations such as South Pacific Chief of Police Conference, Oceanic Customs Organisation, FRSC, Pacific Immigration Director's Conference which serve to promote information sharing on transnational crimes. They last met on 2-3 May 2002 to consider law enforcement issues in line with Resolution 1373 for further consideration at the Forum Regional Security Meeting in June 2002. Again the *Mutual Assistance Act,* and the *Proceeds of Crime Act* are relevant here.

Sub-paragraph (g) - How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc?

Tightening of airport security is an obvious response that the public has experienced directly.

Information alerts and exchanges with metropolitan agencies put border control agencies on notice on the entry of known terrorist, sympathizer or supporter, whose movement is tracked and monitored closely by the Special Branch. Special Branch is mandated to monitor internal political dissidence movements. Broadening its mandate will give it capacity for wider intelligence gathering on international terrorism.

Operative Paragraph 3

Sub-paragraph (a) - What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this sub-paragraph?

Work has/is started/progressing to get Fiji Police on the internet data base....see Samoa South Pacific Chief of Police Conference review on this facility..

Sub-paragraph (b) - What steps have been taken to exchange information and cooperate in the areas indicated in this sub-paragraph?
Research, formulation and drafting of model legislation on transnational crimes are being driven on a regional level with the Forum Secretariat taking the lead role.

The set up of CLAG sets in motion its various constituent needs where CLAG branches are necessary in the following: Maritime, Airport, Anti Money laundering CLAG, Inter-department Support Group CLAG. These four elements will form the CTC at the National level, driven by the National Security Council (NSC). NSC consists of the PM, Attorney General, Minister of Finance, Minister of Home Affairs, PS Home Affairs, Commander RFMF, Commissioner of Police.

Sub-paragraph (c) - What steps have been taken to cooperate in the areas indicated in this sub-paragraph?

Response to paragraph 2(c) is relevant

Sub-paragraph (d) - What are your government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this sub-paragraph?

Fiji is a party to the following five (5) international conventions and protocols relating to terrorism:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft 1969
- Convention for the Suppression of Unlawful Seizure of Aircrafts 1971
- Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation 1973
- Protocol for the Suppression of Acts of Violence At Airports Serving International Civil Aviation 1988 (, supplementary to the Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation 1973)
- Convention on the Safety of United Nations & Associated Personnel 1994

Government had made initial preparations for ratification in 1997 of the Convention on the marking of Plastic Explosives for the Purposes of Detection 1971, and in late 2000 for ratification of the International Convention for the Suppression of Terrorist Bombings 1997, and the International Convention for the Suppression of Financing of Terrorism 1999. In light of September 11, and the CTC mandate, these efforts need reenergizing. A Cabinet paper would serve to profile all relevant issues and gain the needed political endorsement to forge ahead with urgent matters.

Sub-paragraph (e) - Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this sub-paragraph.

Constitution of the Republic of the Fiji Islands 1998 Chapter 14
Suppression of Terrorism Decree 1991
Penal Code Cap 17, (and *Criminal Procedure Code* Cap 21)

The Penal Code is archaic and has general provisions with reference to terrorism. Of specific nature are the proscribed offences of foreign enlistment (s71), piracy (s72), hijacking (s73) and related aircrafts offences (ss 74, 75 & 76).

The Penal Code Chapter 10 of includes provisions on unlawful assemblies or societies, riots and other offences against public peace.

Section 65(1) 'Seditious intention' corresponds to Part II (2) of the now repealed FIS Decree which defined 'terrorism' as the training, planning, preparations or other activities for the purposes of violent subversion in a foreign country or for the purposes of the Commission in a foreign country of other acts of violence.

Fiji Intelligence Service (FIS) Decree 1990. Its repeal in 1999 left a vacuum on the security front, which was attributed to the civil takeover of the Labour government. FIS was tasked to prevent and suppress the occurrence of violent subversive activities such as terrorism. In addition to the above definition, terrorism was also defined as acts of violence for the purposes of achieving a political objective in Fiji or in a foreign country including acts of violence for the purpose of influencing the policy or acts of a government in Fiji or in a foreign country. It also included under terrorism acts that are punishable under any law relating to internationally protected person, the hijacking of aircrafts or the protection of aircraft.
FIS would collate, process and provide accurate, impartial and timely intelligence information for use by the National Security Council, and approved departments agencies or persons.

Public Order Act Cap 20
In maintaining public order this Act proscribes acts or omissions calculated to bring death or injury to any person, class, community or body of persons, or to lead to the damage or destruction of any property or to prevent or defeat by violence or by other unlawful means the execution of or the enforcement of any written law or to lead to defiance or disobedience of any such law shall be guilty of an offence. Under the FIS Decree, such acts when committed were capable of being categorized as terrorist acts under its definition provisions, especially in case of hijacking or an aircraft related offence.

Civil Aviation (Security) Act 1994
This Act makes provisions for offences against the safety of Civil Aviation, for the protection of civil aviation from acts of unlawful interference, for airport security,, for the powers of search and arrest of operators and commanders of aircraft and related matters.

Part II sets out the offences against the safety of civil aviation as follows:

Section 3 Hijacking by any person on board an aircraft flight who unlawfully exercises forceful, threatening or intimidating actions of any kind to seize or control the aircraft's operation irrespective of the person's nationality, the country of registration of the aircraft or the location of the aircraft.
Section 4 makes liable any conspiracy or commission of any act on board an aircraft in connection with the hijacking. With respect to aircrafts used in military, customs or police services for Fiji the offence of Aircraft sabotage is defined in Section 5.
Endangerment of aircraft, airport sabotage, ancillary offences, taking of aircraft and various threats and false statements respecting aircrafts, and airports are also provided for.

Sub-paragraph (f) - What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

There is no specific legislative framework for refugees or asylum seekers in Fiji. It is important that law review and reform in Fiji aim to codify treaty obligations in refugee law as well as incorporating critical elements in screening asylum seekers for previous terrorist connections or activities. This is an area of need given the novelty of the subject and related issues, and its non-existence in Fiji.

Sub-paragraph (g) - What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognised as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

Please refer to responses under OP3(f). In addition the absence of refugees or asylum seekers in Fiji territory has led to general complacency on this subject. The recent people smuggling cases involving Australia, which led to the set up of a Cabinet Sub-Committee on Refugees, have challenged this mindset. This Committee will likely need expert analysis and advice to accommodate the range of issues that have bearings on its refugee mandate.

Recent growing incidences of passport scams or travel identity offences and in numbers of stranded passengers have alerted the authorities to possibly bigger rackets. Media probings into the prominence of Chinese triad gangs in criminal activities in Fiji have added to more caution.

Executive Actions

Since the Honolulu Pacific Island Counter Terrorism Conference in March 2002, Fiji plans to establish a coordinated approach which will be driven by the National Security Council (Prime Minister, Attorney General, Ministers for Finance, and for Home Affairs) to monitor the implementation of Resolution 1373 based on reports from the four (4) component Committees:

- Anti-Money Laundering Officials Committee
- Airport Combined Law Agency Group (CLAG)
- Maritime CLAG
- Interdepartmental Support Group CLAG which includes the Police Special Branch.

This Plan needs Cabinet endorsement before developing further.

Areas of Need

Legal Expertise

Law reform and drafting expertise specializing in the area of international crimes and terrorism

Need expert analysis on the available options on the legislative framework:

- The Australian 7-Bills legislative package;
- The umbrella legislative approach preferred by the Expert Working Group on Legislative and Administrative Measure to Combat Terrorism, convened by the Commonwealth Secretaries; or
- The Omnibus Approach recommended for the former US territories.

Effective implementation of existing legislation within existing resources and capacity

Other Areas of Assistance that are identified

- **Design and delivery of effective administrative and policy mechanisms.**
- **Strengthened border control measures, which is now being rebuilt for purposes of complying with the copyright legislation requirements. Specific expertise in other areas pertinent to Res1373 are lacking.**
- **Monitoring and policing of international activities that are closely associated with international terrorism.**
- **Information Communication and Technology to strengthen capacity to stay vigilant.**
- **Internal Policy Coordination and need to be guided by Best Practice Models that other countries of similar local conditions, great isolation, fragile resource base, and technically weak resources,**

Fiji looks forward to dialogue with the Committee on Counter Terrorism. For ease of reference, copies of the Mutual Assistance Act 1997 and Proceeds of Crime Act 1997 can be accessed at the following UNCDP site: http://www.undcp.org/adhoc/legal_library/undcp/legal_library/index-countries-fj.html this site also has online texts of the Dangerous Drugs Act and its amending or subsidiary legislation.